Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Lifeline and Link-Up	)	WC Docket No. 03-109
In the Matter of	)	
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
TRACFONE WIRELESS, INC.	)	
	)	
Petition for Designation as an Eligible Telecommunications Carrier in the State of New York	)	

COMMENTS OF THE NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER ADVOCATES

I. INTRODUCTION

The Federal Communications Commission ("Commission") has asked for comment on two filings concerning the designation of eligible telecommunications carrier ("ETC") status for carriers that seek only low-income universal service fund support.[1] The filings in question are a Petition for Limited Reconsideration filed by AT&T Corp. ("AT&T") in CC Docket No. 96-45 on July 21, 2004, and amendments filed by TracFone Wireless, Inc. ("TracFone") on August 16, 2004 to its petitions seeking ETC status in Florida, New York and Virginia.[2]

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[1] Public Notice, DA 04-2750 (August 30, 2004).

[2] TracFone plans to seek ETC designation in additional states. See CC Docket No. 96-45, Amendment to Petition for Designation as an Eligible Telecommunications Carrier in the State of New York (August 16, 2004) ("TracFone Amendment") at 2, n. 2. In addition, on June 8, 2004 TracFone filed a petition asking the Commission to forbear from the requirement that ETCs provide service at least in part over their own facilities. There should be no question that TracFone has failed to meet the statutory tests for forbearance. 47 U.S.C. § 160(a).

The National Association of State Utility Consumer Advocates ("NASUCA")[3] generally supports the creation of an ETC designation that allows qualified carriers to be eligible for only Lifeline/Linkup support, rather than other forms of federal universal service support. Although the Commission has requested comment on this issue as a result of the AT&T and TracFone petitions, the appropriate way to make this change is through a rulemaking proceeding. In addition to discussing why NASUCA supports the rule change requested by AT&T, NASUCA's comments raise concerns about requirements that should apply to carriers who seek to become low-income competitive ETCs ("CETCs").

II. NASUCA PROVISIONALLY SUPPORTS AT&T'S PROPOSAL TO ALLOW CARRIERS TO QUALIFY AS "LOW INCOME" CETCS.

NASUCA supports AT&T's petition to the extent that the relief sought by AT&T would provide appropriate incentives to expand low-income support and streamline the administrative process for competitive local exchange carriers ("CLECs") that legitimately participate in the Lifeline/Link-Up programs. AT&T correctly observes that the characteristics of the low-income programs are very different from those of the high cost support mechanisms. While recipients of high-cost support are appropriately held to

[3] NASUCA is a voluntary, national association of 44 consumer advocates in 42 states and the District of Columbia, organized in 1979. NASUCA's members are designated by the laws of their respective states to represent the interests of utility consumers before state and federal regulators and in the courts. See, e.g., Ohio Rev. Code Chapter 4911; 71 Pa. Cons. Stat. Ann. § 309-4(a); Md. Pub. Util. Code Ann. § 2-205(b); Minn. Stat. Ann. Subdiv. 6; D.C. Code Ann. § 34-804(d). Members operate independently from state utility commissions, as advocates primarily for residential ratepayers. Some NASUCA member offices are separately established advocate organizations while others are divisions of larger state agencies (e.g., the state Attorney General's office). Associate and affiliate NASUCA members also serve utility consumers, but have not been created by state law or do not have statewide authority.

the minimum standards that govern ETC designation,[4] for various reasons such requirements may not be necessary for participation in the Lifeline/Link-Up programs.

A. Lifeline/Link-Up Represents a Much Smaller Use of Universal Service Fund Dollars.

The dollar magnitude of the Lifeline/Linkup programs is just a fraction of the cost of federal High-Cost support. Given the number of dollars at stake, it is inappropriate to require an administrative burden for ETC designation that provides a disincentive to participation in Lifeline/Link-Up. AT&T states that it and other CLECs sometimes forgo federal Lifeline/Linkup support even when it actually provides the support to low-income customers in states that require all LECs to provide Lifeline customer discounts.[5] Assuming the accuracy of AT&T's representation, it appears evident that the cost of securing ETC status can be too high relative to the low-income support dollars that a CLEC will receive. Under those circumstances, CLECs, such as AT&T will not have the proper incentives to attract low-income customers.

B. The Nature of the Lifeline/Link-Up Program Suggests the Need for Different Carrier Standards Than Those Required for Carriers Receiving High-Cost Support.

The Lifeline/Link-Up programs are designed as a simple pass-through to compensate carriers for the direct costs associated with the discount provided to low-income customers. In contrast to the high-cost support mechanisms, low-income support does not usually raise questions concerning the nature of the supported service – there are no complex geographic issues, there are no competitive issues, there are no issues concerning the appropriate use of support dollars, there are no differences in the amount

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[4] In other comments in 96-45, NASUCA supports the adoption of higher standards for ETC designation.

[5] See AT&T Petition at 3-4.

of per-line support, and there are no programmatic differences in rural versus non-rural areas. While it is essential that USAC perform adequate audits to ensure the integrity of the Lifeline/Link-Up program, a streamlined process to gain eligibility for federal low-income support would be appropriate, given the relative simplicity of the program.

Moreover, in the case of Lifeline and Link-Up support, every dollar of support must equal a dollar of assistance to low-income customers. In the case of the high-cost support mechanism, where the ultimate use of support dollars is much less obvious, greater scrutiny through the ETC designation process is crucial.

C. Competitive Neutrality Would Be Enhanced by the Availability of a Streamlined Low-Income-Only ETC Designation.

Carriers that forgo full ETC status and high-cost support but serve (or wish to serve) low-income customers at discounted rates are at a disadvantage compared to the incumbent carrier which is made whole for its low-income discounts. As a result, the non-ETC carrier may either fail to provide low-income support to its customers or it may do so at its own expense. Either result is inconsistent with the incentives designed to encourage low-income support and competitive neutrality that Congress intended.

III. THERE SHOULD BE CONDITIONS PLACED ON RECEIPT OF LOW-INCOME SUPPORT BY CARRIERS SPECIFICALLY DESIGNATED AS "LOW-INCOME ETCs," JUST AS THERE ARE CONDITIONS PLACED ON CARRIERS RECEIVING SUPPORT FROM THE HIGH-COST FUND.

Clearly, adding a "low-income ETC" designation will increase the options available for low-income customers. A key intention of the universal service provisions of the Telecommunications Act of 1996[6] is that

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[6] Pub. L. No. 104-104, 110 Stat. 56.

> [c]onsumers in all regions of the Nation, *including low-income consumers* … should have access to telecommunications and information services … that are reasonably comparable to those services provided in urban areas , and that are available at rates that are reasonably comparable to rates charges for similar services in urban areas.[7]

Yet the statute also says, with regard to universal service support, that carriers who receive federal universal service support "shall use that support only for the provision, maintenance and upgrading of facilities and services for which the support is intended."[8] As argued elsewhere by NASUCA,[9] the services to be supported by federal funds are those on the list determined by the Commission pursuant to the statute.[10] The implication of this for Lifeline programs is that, as in the high-cost context, although Lifeline customers should continue to have access to all services,[11] only the services designated pursuant to 47 U.S.C. 254(c)(1) should be supported by Lifeline funds.

A further implication for the Lifeline program is that although Lifeline customers should not be denied the opportunity to subscribe to optional or bundled services, they should not be required to subscribe to optional or bundled services as a condition of receiving Lifeline benefits. Any "low income ETC" should be willing to accept this condition on its service. Therefore, in order to qualify as "low-income ETC," a carrier should offer a basic service package, and may offer additional service packages. The carrier should not require but should allow Lifeline customers to subscribe to those additional packages in addition to their basic service.

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[7] 47 U.S.C. § 254(b)(3) (emphasis added).

[8] 47 U.S.C. § 254(e).

[9] See, e.g., NASUCA's Comments on the Recommended Decision of the Federal-State Joint Board on Universal Service (August 6, 2004).

[10] 47 U.S.C. § 254(c)(1).

[11] See, e.g., NASUCA Reply Comments (June 3, 2003) at 2.

There are additional issues here, all of which support NASUCA's recommendation to open a rulemaking on the designation of low-income ETCs.[12] For example, there is the public policy question of whether it is appropriate to provide low-income support to CLECs that offer a low-income rate that is substantially higher than that of the incumbent provider. While competitive neutrality is a legitimate statutory goal both for carriers and customers,[13] the primary goal of the low-income programs is to get a customer connected to the network at an affordable rate.

These issues are highlighted by the carriers whose submissions are being reviewed here. AT&T did not disclose the nature of the plans and rates that it would provide to low-income customers. If, for example, AT&T plans to offer a low-income discount for its "One Rate USA" plan at $55 per month as a low-income ETC, it should be allowed to do so only upon the condition that it also offers an affordable standalone basic service alternative to Lifeline customers. If AT&T proposes to offer a stand-alone low-income rate that is equal to or less than the incumbent's low-income rate, such discounts should qualify for support along with any other alternatives offered to low-income customers.

NASUCA is concerned that expensive unlimited local/long-distance bundled plans might be inappropriately marketed to low-income customers for whom such plans are not a rational choice. Low-income ETCs should be required to disclose the total costs of any plans marketed to low-income customers in comparison with the carrier's lowest-cost standalone basic service package.

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[12] Many of these issues are, of course, also present in the context of high-cost support.

[13] Since the costs of service of CLECs have never been measured, it would be difficult for any CLEC to argue that competitive neutrality requires that it be supported in providing a higher low-income rate.

TracFone, on the other hand, offers some details regarding its Lifeline proposal.[14] TracFone states that its Lifeline plan would consist of 250 prepaid minutes for $25. Once the prepaid minutes were used, the Lifeline customer would need to purchase additional minutes. There would be no monthly usage requirement and the minutes would be valid for at least one year from the date of purchase. TracFone proposes to include other features (voice mail, caller ID, call waiting and inbound SMS text messaging) at no additional cost. Outbound text messaging would cost five cents per message, and Lifeline customers could purchase handsets at a discount, although TracFone does not disclose the nature of the discount.

NASUCA has concerns regarding TracFone's proposal. For example, the 250 prepaid minutes is inadequate. The latest wireless industry survey conducted by the Cellular Telecommunications & Internet Association ("CTIA") shows that the average cellular call is now over three minutes long.[15] Thus, on average, TracFone Lifeline customers would be able to make approximately 83 calls for their $25, or approximately one call every four days over the usable term for the minutes (one year). More realistically, over the course of a month Lifeline customers would be able to make fewer than three calls per day. It is highly likely that TracFone Lifeline customers would have to purchase additional minutes once or twice per month. These low-income individuals could thus end up paying $50 to $75 per month for Lifeline service, considerably more than their wireline carrier's Lifeline – or even its regular – service. While wireless service provides different benefits, TracFone's proposed low-income program appears to

[14] See TracFone Amendment at 3.

[15] CTIA, Semi-Annual Wireless Industry Survey at 3 (available at http://files.ctia.org/pdf/CTIA_Semiannual_Survey_YE2003.pdf)

be far less affordable than plain old telephone service of the ILEC, unless the customer's usage is minimal, making it unlikely to be in the public interest to support this service.

It is also unclear how TracFone's proposal would meet the Link-Up requirements for ETCs.[16] Under Link-Up, ETCs are required to discount Lifeline customers' connection charges by 50%, up to a maximum of $30.[17] ETCs also must offer a deferred payment schedule for connection charges[18] in addition to the discount if the customer chooses.[19]

If TracFone became an ETC, TracFone's Lifeline customers would not be subjected to traditional connection charges. Instead, those customers would likely incur the cost of new equipment, i.e., a cell phone, in order to be connected to TracFone's Lifeline service. Because such equipment might not be within the means of the customers that TracFone would be targeting, it is logical that both the discount and the deferred payment schedule from Linkup should apply to the purchase of cellular phones by TracFone's Lifeline customers.

IV. THE COMMISSION SHOULD EXAMINE THE ISSUES OF ETC STATUS FOR LOW-INCOME-ONLY LIFELINE PROGRAMS IN A GENERIC RULEMAKING PROCEEDING.

The issues raised by AT&T and TracFone have broad-ranging implications. Other carriers will undoubtedly seek low-income-only ETC status, thus requiring the Commission to examine each carrier's proposal case-by-case. Such piecemeal regulation is not in the public interest.

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[16] 47 C.F.R. § 54.411.

[17] 47 C.F.R. § 54.411(a)(1).

[18] 47 C.F.R. § 54.411(a)(2).

[19] 47 C.F.R. § 54.411(b).

Instead, the Commission should address the issues in a generic rulemaking proceeding. NASUCA thus recommends that the Commission hold the AT&T and TracFone petitions in abeyance and conduct a generic proceeding examining whether and how providers may be designated as ETCs for low-income purposes only.

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September 20, 2004